



DECISION of the FEI TRIBUNAL

dated 25 September 2015

Positive Anti-Doping Case No.: 2015/BS04

Horse: CHARIVARI KG

Person Responsible/NF: Alessandra Bichsel/SUI

National Federation: Swiss Equestrian Federation (La Fédération Suisse des Sports Equestres)

Event: CSIOY, Deauville, France

Date: 7 - 10 May 2015

Prohibited Substances: Oripavine, Codeine (Banned Substances), Morphine (Controlled Medication Substance)

A. COMPOSITION OF PANEL

Mr. Erik Elstad, Chair
Mr. Henrik Arle, Panel Member
Mr. Pierre Ketterer, Panel Member

B. PARTIES

1. The Person Responsible ("PR"), Ms. Alessandra Bichsel, is a professional show jumping rider for Switzerland.
2. The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

C. BACKGROUND

On 17 September 2015, the FEI informed the Tribunal Chair that the Parties had reached an agreement in the context of the case 2015/BS04 – CHARIVARI KG and submitted the Agreement (together with the Case Summary (as per Paragraph C. I below) and the Full Reasoning for the Agreement (as per Paragraph C. II below)) to the FEI Tribunal for approval and incorporation into a Decision of the FEI Tribunal in accordance with Article 7.6.1 of the EAD Rules.

I – Case Summary (as provided to the FEI Tribunal by the Parties as part of the Agreement referred to in Paragraph D. below)

1. The PR took part with her horse CHARIVARI KG (the "Horse") at the CSIOY event held in Deauville, France from 7 - 10 May 2015 (the "Event").
2. The Horse was selected for testing on 8 May 2015. The resulting samples were transported to the FEI approved LGC Newmarket Road Laboratory ("LGC") in Cambridgeshire, UK for analysis.
3. By notification letter dated 20 July 2015, the FEI informed Ms. Bichsel, in her capacity as the Person Responsible, and the Swiss Equestrian Federation (the "SUI-NF") of an alleged violation by Ms. Bichsel of Article 2.1 (*The Presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample*) of the EAD Rules and that, in accordance with Article 7.4.1 of the EAD Rules, a Provisional Suspension had been imposed on her following (i) the positive finding of the Banned Substances Oripavine and Codeine (and the Controlled Medication Substance Morphine) in the A-Sample of the Horse. The notification stated that, according to LGC, the presence of Codeine and Oripavine may indicate that the ingestion of poppy seed could be the source of the positive Morphine finding.
4. The PR was also informed that a Provisional Suspension of two (2) months, i.e. until 19 September 2015, had been imposed on the Horse.
5. A Preliminary Hearing took place before a Preliminary Hearing Panel of the FEI Tribunal, consisting of Mr. Henrik Arle, on 24 July 2015.

6. The Preliminary Hearing Panel decided, on the basis of the written and oral submissions by the Parties, that the prerequisites under Article 7.4.4(iii) of the EAD Rules for a lifting of the Provisional Suspension of the PR had been met. The Preliminary Hearing Panel welcomed the actions taken by the PR in co-operation with the SUI-NF to identify the source of the Prohibited Substances detected; the precautions apparently taken by the PR; that Provisional Suspensions had been lifted in three ongoing cases involving Oripavine and Morphine and also considered that the scientific evidence presented by the PR demonstrated the likelihood of feed contamination. On that basis, the Preliminary Hearing Panel accepted that exceptional circumstances existed and the Provisional Suspension of the PR was lifted with effect from 27 July 2015, at midnight.
7. The Preliminary Hearing Panel maintained the Provisional Suspension of the Horse until 19 September 2015.
8. On 5 August 2015, the PR, in accordance with Article 7.4.6 of the EAD Rules, requested the immediate lifting of the Provisional Suspension of the Horse. On 7 August 2015, the FEI opposed to the request for the lifting of the Provisional Suspension of the Horse.
9. On 10 August 2015, the Preliminary Hearing Panel issued its decision to maintain the Provisional Suspension of the Horse until 19 September 2015 on the basis that, irrespective of the source of the Prohibited Substances, (a) the system of the Horse had contained Banned Substances; and (b) it was the FEI's established policy to impose a two (2) month Provisional Suspension in such cases.
10. In the course of the submissions relating to the request to lift the Provisional Suspension of the Horse and in further communications between the Parties, the PR submitted various documents in order to establish that the Prohibited Substances entered the Horse's system through contaminated feed supplied to the PR by her feed supplier Swissfritz Pferdefutter ("Swissfritz"). In particular, the PR informed the FEI of the fact that two horses of another Swiss rider (the "Other Rider") were tested approximately one week after the PR's Horse and had also tested positive for the same substances as the PR's

Horse. The FEI was informed that following enquiries by the PR she had learned that both she and the Other Rider had been using Swissfritz as their feed supplier.

11. The SUI-NF also provided the FEI with analyses results from the Laboratoire des Courses Hippiques in France ("LCH"), an FEI approved laboratory, in relation to tests carried out on various samples of Swissfritz feed produced during the period 14 April 2015 – 4 May 2015. Among the Swissfritz feed samples that were analysed at the LCH were samples taken by two FEI approved veterinarians, which had been personally delivered to the LCH from (a) the feed at the stables of the Other Rider; (b) samples taken from other Swissfritz customers (including a sample taken from the stable where the PR's Horse was stabled at the time the positive test occurred); and (c) samples taken from sample batches of feed retained at the feed mill where the Swissfritz feed is manufactured/stored. The samples from the retained feed at the feed mill corresponded with the batches of Swissfritz feed supplied to the Other Rider. The LCH found that the samples of the Swissfritz feed analysed contained Morphine, Codeine and Thebaine. In addition, the LCH also analysed samples of feed from other feed suppliers, such samples also having been taken at the Other Rider's stable and submitted to the LCH by the same two FEI approved veterinarians. The analyses of the samples of the feed from the other feed suppliers returned negative results.
12. The FEI was further provided with documentation by the SUI-NF in relation to tests on blood and urine samples taken from the Other Rider's horses on 22 July 2015 which had again tested positive for the Prohibited Substances in question. The SUI-NF explained in this context that following such positive tests, the Other Rider had changed the feed given to the horses and further blood and urine samples were taken from the horses. Further documents submitted to the FEI showed that the results of the analysis of such further samples, carried out on 3 August 2015, revealed that the Other Rider's horses were free from any Prohibited Substances.
13. The PR also submitted a copy of a letter from Swissfritz to its clients on 5 August 2015, in which Swissfritz informed its clients that some of the feed

that it had delivered to clients had, in all probability, been contaminated with poppy seeds.

14. The PR provided the FEI with a copy of a letter to the SUI-NF from Dr. Anton Fürst, a veterinarian and a professor at the University of Zurich, in which Dr. Fürst stated that further analysis was carried out on all the ingredients used to produce the two Swissfritz horse feeds in question in order to determine which of the ingredients was responsible for the contamination with poppy seeds. Dr. Fürst stated that the results of those tests showed that oats, originating from France, were the source of the poppy seeds and that it could be determined that such oats were added whole to the processed feed and, through that process, the poppy seeds (hidden in the oat hulls) came to be added to the processed Swissfritz feed.

II – Full Reasoning for the Agreement (as provided to the FEI Tribunal by the Parties as part of the Agreement referred to in Paragraph D. below)

15. According to Article 10.2 of the EAD Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, two years. A fine of up to CHF 15,000 shall also be imposed and appropriate legal costs.
16. Article 10.4 of the EAD Rules states *“If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he/she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions (apart from Article 9) shall be eliminated in regard to such Person. When a Banned Substance and/or its Metabolites or Markers is detected in a Horse’s Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse’s system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of*

Ineligibility for multiple violations under Article 10.8 below." Article 10.4 of the EAD Rules also states that it "*only applies in exceptional circumstances*".

17. Based on the evidence and documentation supplied by the PR (as described in Section C above), the FEI evaluated whether or not Article 10.4 of the EAD was applicable. The FEI considered if the PR had established how the Banned Substances had entered the Horse's system. In this regard, the FEI accepted that the feed that had been supplied to the PR by Swissfritz and fed to the Horse was indeed contaminated and that this was the means by which the Banned Substances entered the Horse's system. The FEI was thus satisfied that the requirement of establishing how the Banned Substances entered the Horse's system has been satisfied.
18. The FEI proceeded to evaluate the level of Fault and Negligence of the PR. The FEI is satisfied that the PR had demonstrated that she bore no Fault or Negligence in so far as she could not reasonably have been expected to take any further measures which would have prevented the Banned Substances entering the Horse's system. The FEI took into account the fact that the Horse had been regularly fed with feed supplied by Swissfritz, had never previously had any issues and had no reason to suspect that the contamination had occurred. Also, the PR's horses had never previously had a positive test.
19. The FEI accepted that the circumstances of the case were exceptional on the basis that the presence of the Banned Substances in the Horse's Sample and in the subsequent tests performed on the Swissfritz feed at the LCH laboratory and particularly the presence of Morphine, Codeine and Thebaine are consistent with poppy seed contamination. This is an issue that the FEI is aware of and there are currently three (3) ongoing cases from 2014 before the FEI Tribunal involving possible contamination with Morphine and Oripavine. Research provided to the FEI stated that the opium poppy *Papaver Somniferum* L contains more than 40 different alkaloids; Morphine, Codeine and Thebaine are among the main alkaloids. Some strains of *Papaver Somniferum* also contain Oripavine. Oripavine is subsequently converted into Thebaine, which is in turn converted into Morphine. Oripavine is a substance

that is not found in any veterinary or human medical product due to its very narrow therapeutic margin and extremely high toxicity levels.

20. The FEI will put a proposed amendment to the FEI Equine Anti-Doping and Controlled Medication Rules (“EADCMRs”) before the FEI General Assembly in November 2015 pursuant to which the concept of “Specified Substances” would be introduced in to the EADCMRs. The proposed introduction of the category of Specified Substances is the result of a lengthy consultation process that began in 2014 involving both the Veterinary Committee and the List Group. The purpose of the amendment is to recognise that it is possible for certain substances to enter a Horse’s system inadvertently, due to a credible non-doping explanation, and therefore to allow the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision. The determination of which substances will be classified as Specified Substances will be made by the FEI List Group together with the FEI Lab Group and it is expected that Morphine and Oripavine, with the latter remaining as a Banned Substance, will be designated as “Specified Substances”. A draft of this proposal has already been circulated to the FEI National Federations for their review and feedback.
21. The FEI was satisfied that the criteria for the application of Article 10.4 of the EAD Rules had been met in that (i) the PR has established how the Banned Substances came to enter the Horse’s system, (ii) the PR has demonstrated that she bore No Fault or Negligence and (iii) the circumstances of the case are exceptional and that, therefore, the otherwise applicable period of Ineligibility (i.e. two years) should be eliminated and that no other Sanctions (other than the Disqualification of the Horse’s results at the Event in accordance with Article 9 and Article 10.1.4 and of the EAD Rules) should apply.

D. AGREEMENT

On 17 September 2015, the Parties reached the following Agreement, based on the facts as detailed above:

*** Quote***

Agreement Made in Accordance with Article 7.6.1 of the FEI Equine Anti-Doping Rules (the "Agreement")

All capitalised terms used in this Agreement but not defined herein shall have the meaning ascribed to such term in the the FEI Equine Anti-Doping Rules ("EAD Rules")

In the matter of the Adverse Analytical Finding related to the samples, which were collected from Ms Alessandra Bichsel's horse CHARIVARI KG (the "Horse") at the CSIOY event held in Deauville, France from 07- 10 May 2015 (the "Event"), Ms Bichsel (the "PR") and the Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties") agree, in accordance with Article 7.6.1 (Agreement between Parties) of the EAD Rules, on the following:

- 1) *The presence of the Banned Substance(s) in the Horse's samples constitutes a violation of Article 2.1 of the EAD Rules.*
- 2) *Ineligibility Period:*
The Parties agree that the prerequisites for Article 10.4 of the EAD Rules (Elimination of the Period of Ineligibility Where there is no Fault or Negligence) are fulfilled in the case at hand and that the applicable period of Ineligibility shall be eliminated.
- 3) *In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules.*
- 4) *Provisional Suspension of Horse*
The PR accepts that the Provisional Suspension imposed on the Horse shall remain in place until 19 September 2015.
- 5) *Disqualification of Results:*
In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PR with the Horse at the Event are Disqualified, including forfeiture of medals, points and prizes.

6) *Full Settlement and Resolution:*

This agreement resolves and settles all outstanding matters between the FEI and the PR, Ms. Alessandra Bichsel, including the horse CHARIVARI KG.

7) *No Other Sanctions*

No fine shall be imposed on the PR. Each of the Parties shall bear their own legal costs.

8) *Right of Appeal*

This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

End Quote

E. JURISDICTION OF THE FEI TRIBUNAL

1. The FEI Tribunal has jurisdiction over this matter pursuant to the FEI Statutes, FEI General Regulations and EAD Rules.
2. As a member of the SUI-NF, the latter being a member of the FEI, the PR was bound by the EAD Rules.
3. Further, Article 7.6.1 of the EAD Rules (*Agreement between Parties*) states that: *"At any time during the results management process the Person Responsible and/or member of the Support Personnel and/or Owner against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the FEI Tribunal, the final agreement shall state the full reasons for any period of Ineligibility agreed, including (if applicable), a justification for why the flexibility in Sanction was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with*

a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

4. Therefore, the FEI Tribunal finds that it has jurisdiction to issue this Decision.

F. APPROVAL OF THE AGREEMENT

1. Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Panel finds no grounds to object to or disapprove the terms of the Agreement and is satisfied the Agreement constitutes a bona fide settlement of the present case.
2. In accordance with the mutual consent of the Parties, the Panel hereby directs the Parties to fully comply with all the terms of the Agreement as set forth in Paragraph D. above. Further, this Decision shall terminate the present case 2015/BS04.
3. The agreement is not contradictory to previous decisions in other cases decided by the FEI Tribunal.

ON THESE GROUNDS

1. The FEI Tribunal rules that the Agreement executed by the FEI and Ms. Alessandra Bichsel concerning the case 2015/BS04 is hereby ratified by the FEI Tribunal with the consent of the Parties and its terms are incorporated into this Decision.
2. This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this decision may be brought by lodging an appeal with the Court of Arbitration for Sport ("CAS") within twenty one (21) days of receipt hereof.
3. This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

H. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes**
- b. The President of the NF of the PR: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Erik Elstad', is centered on the page. The signature is written in a cursive, flowing style.

THE CHAIRMAN, Mr. Erik Elstad